No 240

Mr. Justice Field.

(1)

RICHARD SULLIVAN, *Trustee, et als.*,

vs.

THE PORTLAND AND KENNEBEC RAIL ROAD CO., *et als.*

PLAINTIFFS' BRIEF.

The plaintiffs, who sue for themselves and all others, similarly situated, are holders of certificates of preferred stock in the K. & P. R. R. Co., on which 3 per cent. dividends are payable semi-annually.

They seek in this case to recover so much of these dividends, as they may show themselves entitled to, of the Portland & Kennebec R. R. Co., who have succeeded to the ownership of the road.

Oct. 15, 1852. the first named corporation made a mortgage of the road, including the portion from Yarmouth to Portland, to John Patten and others, in trust for certain bondholders, who afterwards foreclosed the mortgage and formed themselves into a corporation by that name, under a law then in force in Maine.

When the plaintiffs' certificates were first issued they were entitled to 5 per cent. semi-annual dividends, but these only covered the road from Augusta and Bath to Yarmouth. In order to extend the road to Portland, certificates to the amount of $202,400, were issued and sold, known as Yarmouth Stock, on which 5 per cent. semi-annual dividends were also payable.

In order to secure to themselves this portion of the line, the K. & P. R. R. Co., April 30, 1850, made a mortgage to John Patten and others, in trust for these stockholders, securing them their stock and 5 per cent. semi-annual dividends, covering the road from Yarmouth to Portland only; which was duly recorded May 2, 1850.

The mortgage under which the defendants claim, given two years afterwards, covered the whole line, and was made expressly subject to this Yarmouth mortgage.

Oct. 7, 1852, the K. & P. R. R. Co., passed a vote, which was the foundation of the trust under which the plaintiffs claim, whereby 2 per cent. of the 5 per cent. secured to the Yarmouth stockholders was transferred to these plaintiffs. Before the vote authorizing defendants' mortgage was passed, the K. &. P. R. R. Co., mortgagors and the Yarmouth stockholders, equitable mortgagees, entered into an agreement which was signed by the President and each stockholder, and indorsed on every certificate of Yarmouth stock, and thereafter 3 per cent. only was regularly paid to the Yarmouth stockholders, and the remaining 2 per cent. to these plaintiffs as provided by this trust. This trust, it will be perceived, does not impose a new liability. It is a provision simply that a part of a certain sum subject to the payment of which the defendants took their title. shall thereafter be paid to the plaintiffs instead of the Yarmouth stockholders.

In consideration of this the plaintiffs surrendered their original certificates on which 5 per cent. dividends were payable semi-annualy and accepted their 3 per cent. certificates.

The earnings of the entire road were paid to the Treasurer of the K. & P. R. R. Co., and the Yarmouth stockholders or their trustees had nothing to do with the management of the road, receiving their dividends directly from the treasurer, as did the plaintiffs their 2 per cent. after the transfer.

By the terms of this trust the Yarmouth mortgage, before redeemable at the pleasure of the corporation, was postponed to Nov. 1, 1870, and all the interests covered by it were fully protected up to that time, being only a few months before this bill was brought.

Aug. 18, 1856, the directors of the K. & P. R. R. Co., being authorized by a special law, entered into an agreement with the trustees under the mortgage of Oct. 15, 1852, they acting by direction of the bondholders, whereby the trustees were put into possession of the road Sept. 1, 1857, and received all the earnings. By article 4, of this agreement made long after the creation of this trust, the trustees are "to pay 5 per cent. semi-annually on the mortgage to trustees of the contributors for building the Yarmouth part of the road." The bill alleges also and the evidence shows that the trustees while in possession under this agreement, stipulating to pay 5 per cent. 2 per cent. of which they well knew was for the benefit of these plaintiffs, applied to their own use $110,000 of the earnings to make the "Williams purchase," so called, which was clearly in violation of their trust and of law.

The record shows that judgment *pro confesso*, has been duly entered against the K. & P. R. R. Co., and we concede the formal organization of the P. & K. R. R. Co., who are the only defendants in interest in this case. The others are formal parties except so far as this judgment may tend to support the allegations against the real defendants as their grantees.

The P. & K. R. R. Co., in their answer admit the truth and correctness of the several exhibits set out in the bill to show the trust, notice and liability. They make no question either as to the amount recoverable if liable, viz: 2 per cent. semi-annually on $202,400, for such years as the same has not been paid. They put their defence upon the ground that no sufficient transfer to the plaintiffs appears to entitle them to maintain this bill and that they took their mortgage, possession and title without notice.

We claim that this is an executed trust, that a sufficient transfer appears, and that they took their title with notice, and ask your Honors' respectful attention to the following propositions and authorities.

1. The agreement indorsed on the Yarmouth certificates, duly executed by the President and each stockholder, creates an *express trust* under the laws of Maine, fully executed, and a sufficient transfer of the 2 per cent. to these plaintiffs, together with the mortgage lien for its security to entitle them to maintain this bill in their relation as *cestui que trusts*. The case shows too, the defendants took their mortgage subject to the Yarmouth mortgage and went into possession five years afterwards, agreeing to pay the 5 per cent. under that mortgage, well knowing that 2 per cent. of it was to go to the plaintiffs. The act under which the foreclosure was made, provides that it shall not impair the rights of any one claiming under a previous mortgage.

Story's Eq., 533, 1040, 1044, 1047, (a.) 1050, 1055, 1057, (a.) and 1231;
Perry on Trust, 359;
4 Kents Com., 305, (n;)
Pratt *v.* Thornton, 28 Maine, 362;
Johnson *v.* Candage, 31 Maine, 28;

Pike *v.* Collins, 33 Maine, 38;
Bush *v.* Swazey, 35 Maine, 52;
Bragg *v.* Paulk, 42 Maine, 515;
Davis *v.* Maynard, 9 Mass., 247;
Eastman *v.* Foster, 8 Met., 19;
Pinch *v.* Anthony, 8 Allen, 536;
Neilson *v.* Blight, 1 Johns. Cases, 209;
Fisher *v.* Field, 10 Johns., 504;
Pattison *v.* Hill, 9 Cow., 749;
[redacted]
U. S. *v.* Waterboro, 1 Davies, 159;
Baker *v.* Whitney, 3 Sum., 483;
Vattier *v.* Hurde, 7 Pet., 272;
Ligard *v.* Hodges, 1 Ves., Jr., 478.
Dale *v.* Hamilton., 22 Eng. Ch., cond., 274.

2. The P. & K. R. R. Co. took their title with notice. The Yarmouth mortgage was recorded and such record is by law notice to subsequent purchasers.

The mortgage under which they hold is made expressly subject to all prior mortgages. Their trustees were members of the corporation passing the vote of Oct. 7, 1852, and holders of Yarmouth stock with this trust set out on all the certificates.

They went into possession of the road under the agreement of Aug. 18, 1856, which provides for its payment and so admit notice.

R. S., of Maine, ch. 51, § 61, ch. 73, § 12;
Ellsworth *v.* Mitchell, 31 Maine, 250.
Green *v.* Hartt, 1 Johns., 589.
Shufelt *v.* Shufelt, 9 Paige, 140.
Carter *v.* Carter, 14 Pick., 428.
Newell *v.* Hill, 2 Met., 181.
U. S. *v.* Waterborough, Daveis, 159.
Eastman *v.* Foster, 8 Met., 25.

3. The plaintiffs do not ask usurious interest.

The 2 per cent. claimed is not in addition to the 3 per cent. named in their certificates, but payment *pro tanto*.

The 5 per cent. secured to the Yarmouth stockholders is not usury.

Their certificates represent stock in the Yarmouth road, and all the earnings belonged to them and they were more than 10 per cent. on the amount of their stock.

The laws of Maine and the charter expressly allow dividends of 10 per cent., and provide that any ex-

cess of earnings shall go to the school fund of the State, making a distinct provision in relation thereto, and so taking it out of the statute.

The defendants took their mortgage expressly subject to the Yarmouth mortgage, and are estopped to set it up.

The statute relating to usury in Maine has been repealed. Being a penal statute, it operates upon existing as well as future contracts.

This defence is not set up in the answer and is not open here. Laws of Maine, 1870, ch. 124, 169. Perrin *v.* Lyman, 32 Ind., 18; Sellers *v.* Bottsford, 11 Mich., 59; Green *v.* Kemp., 13 Mass., 518; Bridge *v.* Huchins, 15 Mass., 103; Brewster *v.* Bailey, 10 Gray, 27; Smith *v.* Stevens, 98 Mass.. 305; Reading *v.* Weston, 7 Conn., 409; Shufelt *v.* Shufelt, 9 Paige, 140; French *v.* Shotwell, 5 Johns. Ch., 565; Ellsworth *v.* Mitchell, 31 Maine, 250.

4. The bill was seasonably brought. By the terms of the trust created by the mortgagors and equitable mortgagees, the amounts secured by the mortgage did not become due till Nov. 1, 1870 a few months before bringing the bill. The stock had not been redeemed when the bill was brought, and the trust indorsement continues the liability until it is redeemed.

The plaintiffs claim under an express trust which is not within the statute.

The defendants have not set up this defence in their answer, nor does it appear by the evidence, and it is not open to them here. Perry on Trusts, §§ 828, 840; Ware *v.* Webb, 32 Maine, 41; Carpenter *v.* Cushman, 105 Mass., 417; Dick *v.* Balch, 11 Curtis, 17; Newell *v.* Nixon, 4 Wall, 572; Columbus Ins. Co. *v.* Reed, 6 Amer. Law Reg., 406; Eastman *v.* Foster, 4 Met., 24.

5. The judgment pleaded is no bar to this claim.

The parties are not the same, nor are the issues the same.

The trust is a special provision for the plaintiffs, and they can alone maintain a suit upon it.

The answer does not aver that the sum claimed here is barred by that judgment. Spooner *v.* Davis, 7 Pick., 148; Burlen *v.* Shannon, 99 Mass., 203; Neafie *v.* Neafie, 7 Johns. Ch., 1; Butz *v.* Mascatine, 8 Wall, 575.

6. The trust appearing, or being admitted, the burthen is on the defendants to discharge themselves therefrom. Harrison *v.* Guest, 35 Eng. Law & Eq., 493; Fox *v.* Macheth, Hare & Wall, L. C. in Eq., 169, (*a*); Cumberland Coal and Iron Co. *v.* Sherman, 30 Barb., 533.

As to the effect of admission in answer, we refer to—3 Greenl. Ev., § 373; Union Ins. Co. *v.* Com. M. M. Ins. Co., 2 Curtis C. C., 524.

A. G. Stinchfield

Solicitor

In reply, specially, to points made in the defendants' brief, we submit:

The two per cent. semi-annually, claimed by the plaintiffs, was set aside not by the K. & P. R. R. Co., but by the Yarmouth stockholders. The trust was created by them and the corporation was only the conduit by which it came to the plaintiffs, and the trust indorsements put upon and made a part of the Yarmouth certificates, provided how this part of the dividends should be paid. By this provision in relation to the plaintiffs' stock, which prior to this was a ten per cent. stock, the dividends on that and the Yarmouth stock, were reduced from ten to six per cent.; the consideration for the plaintiffs' consenting to the reduction of their dividend being this, that they were absolutely secured by this trust under the Yarmouth mortgage, four of their six per cent.; and the consideration to the Yarmouth stockholders, being that the right of the corporation to redeem their stock at pleasure, was waived, and it was made irredeemable until Nov. 1, 1870, and the K. & P. R. R. Co., were benefitted, by the reduction of both to a six per cent. stock. It is not the vote of Oct. 7, 1852, but the indorsement on the Yarmouth certificate in pursuance of it that raises the trust, and secures the plaintiffs this two per cent. semi-annually.

The vote of Oct. 7, 1852, was passed before the vote by the same corporation, authorizing the mortgage under which the defendants claim, just eight days before.

By the provision in their favor, the plaintiffs were not entitled to this dividend, till July 1, 1853, when their dividends were payable on their new certificates, and then and ever after it was paid to them, until a majority of the trustees under the defendants' mortgage, united with a majority of the directors and the superintendent and two others, to seize the road in their possession under the agreement of Aug. 18, 1856, which the directors were authorized by Sect. 10, of the act of April 1, 1856, to make, with a view of wresting it from the stockholders.

This trust indorsement does not impose any new liability upon the defendants. They took their mortgage expressly subject to the payment of this five per cent. dividends under the Yarmouth mortgage, and when they went into possession under the agreement of Aug. 18, 1856, four years after this trust was created, all of which time this two per cent. semi-annually had been paid to the plaintiffs, the trustees agreed by its fourth stipulation, to continue to pay it, which does not look as if they understood it was released to the K. & P. R. R. Co.

Counsel says that the possession of the trustees under the agreement of Aug. 18, 1856, was only nominal. The case shows that they went into possession under it, and continued in actual possession until they had foreclosed the mortgage, and conveyed to the P. & K. R. R. Co., after the organization of that corporation, and so surrendered their trust as provided by the act of April 1, 1857, as appears by their deed.

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But if the trustees were in under the act of April 1, 1857, it amounts to the same thing, for they are required by that act to appropriate the earnings, according to the legal rights of the parties, as set out in the agreement for possession, of Aug. 18, 1856. It is, too, expressly provided by Sect. 9, of that act, that any foreclosure under it shall not impair the right of any one claiming under a prior mortgage as these plaintiffs, it is conceded, do, viz: under the Yarmouth mortgage made and recorded, more than two years before defendants' mortgage was made.

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Counsel says that plaintiffs have never called on the defendants to pay this two per cent. semi-annually. The fact is otherwise if materia[illegible] If he means that they have not called with success, it would [illegible]pply not only to them, but to all other interests. The truste[illegible] and their associates being in possession of the road with a [illegible]ajority of the directors and of their own board in their int[illegible]est, used the earnings to buy up all claims, and paid nobody a[illegible]ything who would not sell at their price, as in the case of the "Williams purchase," which was so paid for

ers sue a corporation of which they are members. The plaintiffs are not members of the P. & K. R. R. Co., and very few of the persons composing the defendant corportion were ever members of the K. & P. R. R. Co., or aided the construction of the road.

4. The point, that our remedy is at law and not in equity, is not set up in the answer. The plaintiffs claim by virtue of an express trust created by the Yarmouth stockholders for their benefit.

Trusts are cognizable by courts of equity, and it is plain the plaintiffs could have no adequate relief at law. *Dodge* v. *Wolsey*, 18 How., 331; *Attwood* v. *Merryweather;* Law Rep. 5 Eq., 464.

and divided up between the directors and trustees, as appears by the testimony of North, Hagar, Gilman, and by the exhibits.

1. As it is conceded that the Yarmouth mortgage secured the amount of the Yarmouth stock, and five per cent. semi-annual dividends, and this trust indorsement transfers two of this five per cent. to the plaintiffs expressly, which trust being in writing cannot be varied or contradicted by parol, it is not perceived with what propriety it can be said that it is not an assignment of an interest in the mortgage, an assertion altogether without evidence to support it. *Steere* v. *Steere*, 5 John. Ch., 18. The plaintiffs have precisely the same lien that the Yarmouth stockholders have, and when the defendants took their mortgage, they made it expressly, subject to this Yarmouth mortgage, stock and dividends. The authorities cited show it an executed trust. See also Lewin on Trusts.

2. We have answered the objection, as to usury. It is absurd to say that it was put in the form it is, to evade the statute. The P. & K. R. R. Co., set up no such defence in their answer, and this Court have held it is not open under circumstances like these. By the terms of this trust, the Yarmouth mortgage did not become due till Nov. 1, 1870, just three months to a day prior to the bringing of this bill. If it had been brought prior to Nov. 1, 1870, the objection would have been that it was prematurely brought. The mortgage securing it, is a specialty, and the indorsement creating our claim, an express trust, to neither of which does the statute apply, which would seem to be a sufficient answer to this stale defence. As the lawful stockholders, they were entitled to all the earnings of the Yarmouth part of the road.

3. The plaintiffs are not stockholders in the defendant corporation. But if they were, they could sue upon an express trust, like this, expressly created by the corporation for their benefit. The principle invoked, applies only where stockhold-

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Mr. Justice Field.

SUPREME COURT,

OCTOBER TERM, 1876.

RICHARD SULLIVAN, *Tr.* & *als.*,

vs.

THE PORTLAND & KENNEBEC RAILROAD CO. & *als.*

PLAINTIFFS' ARGUMENT.

Statement of Case.

The plaintiffs are holders of preferred stock in the K. & P. R. R. Co., and by the tenor of their certificates are entitled to 3 per cent. semi-annual dividends, which, suing for themselves and all others similarly situated, they seek to recover in this case in part. p 1. 2. 3. 4. 8. 9. 17

The defendants are the K. & P. R. R. Co., their grantees the P. & K. R. R. Co., and John Patten, surviving trustee, under the Yarmouth mortgage named in the bill. The record shows that judgment *pro-confesso* was duly rendered below against the K. & P. R. R. Co., and that the P. & K. R. R. Co., and John Patten have filed separate answers which the plaintiffs have joined by general replications. It also appears that the P. & K. R. R. Co., are practically the only defendants in interest here. The plaintiffs seek to recover in this case 2 per cent. semi-annually on the sum of $202,400, that being the total amount of the Yarmouth stock, so called, named in the bill, to be appropriated towards their dividends for such years, since April 1, 1853, as the same have not been paid to them. They seek to recover this 2 per cent. not of the K. & P. R. R. Co., who issued their certificates, but of the P. & K. R. R. Co., who have become owners of the road, its franchise and rolling stock.

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y base their right to recover this of the corporation last named, upon the ground that an express trust was created for their benefit by the K. & P. R. R. Co. and the Yarmouth stockholders, who at the time sustained to each other the relation of mortgagors and mortgagees, and that the P. & K. R. R. Co., took their title with notice of this trust and under a stipulation to pay this 2 per cent. to the plaintiffs, as the K. & P. R. R. Co. had previously done. The facts as shown by the bill, answer and evidence are as follows. On the 30th day of April, 1850, the K & P. R. R. Co. made a mortgage of that portion of the line from Augusta to Portland, known as the Yarmouth porti n, to John Patten and others, in trust, to secure to the holders of the stock representing that part of the line, the amount of their stock being $202,400, and 5 per cent. semi-annual dividends.

On the 7th day of October, 1852, an arrangement was made by and between the K. & P. R. R. Co., mortgagors, and the Yarmouth stockholders, equitable mortgagees under this mortgage, whereby 2 per cent. of the 5 per cent. semi-annual, secured to the holders of Yarmouth stock, was transferred and assigned to the holders of the first preferred stock of the K. & P. R. R. Co., represented by the plaintiffs, and made payable to them after April 1, 1853.

This arrangement for the plaintiffs' benefit, was put in the form of a trust, and was indorsed on, and made a part of every certificate of Yarmouth stock, and was signed by every Yarmouth stockholder, for whose benefit the mortgage was made, and by the President of the K. & P. R. R. Co., in behalf of that corporation, as evidencing their assent to it, and was in this form:—

"*In consideration*, That the Kennebec and Portland Railroad Company waive their right to redeem the within stock until November 1st, 1870, pursuant to a vote of the stockholders passed October 7, 1852, I hereby authorize and direct the trustees within named, from and after April 1st, 1853, until this stock shall be redeemed, to pay over to the Treasurer of said Company, all of the income (or earnings) to which I am entitled "under the votes, agreement and mortgage deed" within named, except three per cent. semi-annually to be paid to the

holder of this certificate (or its substitutes.) Said excess of income (or earnings) (above said three per cent. semi-annually) to be held by said Treasurer, *in trust*, to be applied as provided in said vote of the stockholders, passed October 7, 1852.

Said payments of three per cent. to the holder of this certificate, (or its substitutes,) and of the excess of income (or earnings,) to the Treasurer as aforesaid, to be in full for the semi-annual income of five per cent. within named. This agreement to be binding on me, and any person to whom I shall assign my interest herein, or any portion thereof.

Dated this day of

(Signed) A. B. Stockholder.

In consideration of the above given authority, and direction to the Trustees within named, the Kennebec and Portland Railroad Company hereby waive their right to redeem the within stock until November 1, 1870, pursuant to the vote above referred to.

Per order of the Directors:

(Signed) R. W. *President of K. & P. R. R. Co.*

Dated this day of "

The vote referred to in, and made a part of the trust agreement, fully and clearly sets out the object and purpose of the trust, and together, they constitute what is known as an executed trust. The mortgagees set aside and transfer to the plaintiffs a part of the fund secured to them and the mortgagors assent to it. After April 1, 1853, 3 per cent., semi-annually, was paid under this mortgage to the holders of Yarmouth stock, and the remaining 2 per cent. was paid to the plaintiffs so long as the K. & P. R. R. Co. had control of the road. The earnings of the whole line, including the Yarmouth portion, was paid into the hands of the Treasurer of the corporation, and the dividends paid by him directly to the stockholders and to these plaintiffs, under their trust, after its creation. The trust indorsement recognizes the fact that the trustees were the holders of the legal title under the mortgage, but, as matter of fact, they were simply stakeholders, and had nothing to do with the management of the road and never received a dollar of the earnings as trustees, or had anything to do with the dividends or management of the road.

On the 15th day of October, 1852, the K. & P. R. R. Co. made a mortgage of the entire road, including the Yarmouth portion, to John Patten and others, in trust, to secure certain bondholders. These bondholders afterwards, through the agency of the trustees named in their mortgage, foreclosed it in accordance with the provisions of an act of the Legislature of Maine, approved April 1, 1857, and organized themselves into a corporation by the name of the Portland & Kennebec R. R. Co, who are the defendants in interest here, and took possession of the road in their corporate capacity, January 1, 1864. The mortgage, under which they so acquired title, is made *expressly subject to all prior mortgages* put upon the road by the K. & P. R. R. Co., one of which it is not disputed was the Yarmouth mortgage under which the plaintiffs claim.

The Yarmouth mortgage, certificate of stock and trust agreement indorsed thereon, and the mortgage under which the defendants claim title, are all parts of this record and show the facts to be as we have stated them.

For a long while after this arrangement was made in behalf of the plaintiffs, and as long as the K. & P. R. R. Co. had control of the road, 3 per cent. semi-annually was paid to the Yarmouth stockholders and 2 per cent. semi-annually to the plaintiffs as provided thereby.

The case finds that, on the 1st day of September, 1857, the K. & P. R. R. Co. gave up the possession and management of the road to John Patten and others, trustees under the defendants' mortgage. The corporation were authorized by a special law to make this arrangement, and the trustees were fully authorized by the bondholders, who are now the stockholders of the P. & K. R. R. Co., to enter into it on their part. It is an undisputed fact, that the trustees under the mortgage of October 15, 1852, went into possession of the road under the agreement of August 18, 1856, made more than four years after this trust in behalf of the plaintiffs was created. By the 4th stipulation under this agreement for possession, the trustees are required among other things to continue to pay to the plaintiffs the 2 per cent. as provided by this trust and as the K. & P. R. R. Co. had done, or, in other words, to pay 5 per cent. on the Yarmouth mortgage, which included this 2 per cent.; and the

case finds that the trustees agreed to do so, as a condition of being let into possession; thus, five years after its creation, fully recognizing the existence and validity of this trust. This agreement for possession is conclusive proof that all parties understood that the object and purpose of this transfer was to secure this 2 per cent. to the plaintiffs and not to remit or release it to the K. & P. R. R. Co. as a gratuity or otherwise. The case shows, too, that in consequence of this provision for their benefit, the plaintiffs, whose certificates prior to this time entitled them to 5 per cent. semi-annually, surrendered them to the corporation and accepted in their place their present 3 per cent. certificates, thus changing their position and relinquishing valuable rights as a consideration therefor.

The allegations of the bill, the admissions of the answer and the evidence show that everything necessary to entitle the plaintiffs to the benefit of this trust, was done and no question is made in this regard.

The bill alleges, too, that while the trustees were in possession of the road under the agreement of August 18, 1856, stipulating to pay 5 per cent. semi-annually to the Yarmouth stockholders, 2 per cent. of which belonged to these plaintiffs, they fraudulently appropriated to their own use $110,000 of the earnings, and the admissions and evidence fully sustain the allegation.

THE ISSUES MADE BY THE ANSWER.

The plaintiffs in their bill set out *in extenso*, with proper averments, the mortgages, certificates of stock, the vote of the K. & P R. R. Co. and the trust agreement of which it is a part, together with the agreement for possession between the directors of the K. & P. R. R. Co. and the trustees under defendants' mortgage of Aug. 18, 1856, whereby the trustees stipulate to pay 5 per cent. semi-annually, under the Yarmouth mortgage, which are the basis of their claim against the P. & K. R. R. Co., for the purpose of showing notice and liability.

To these several averments and exhibits, the P. & K. R. R. Co. in their answer say, "that as to the averments in said bill of complaint of the stipulations and agreements entered into by and between the holders of said Yarmouth stock, said corpora-

tion and the holders of said first preferred stock, so far as relates to the terms of said stipulations and agreements as set forth in said bill, and the exhibits filed by said complainants, the *defendants admit them to be true.*"

This admission includes the trust indorsement on the Yarmouth stock, and all the averments in the bill relating thereto as well as the agreement for possession of Aug. 18, 1856, and the stipulation therein to continue "to pay 5 per cent. semi-annually on the mortgage to trustees of the contributors for building the Yarmouth part of the road;" and also the allegation that the mortgage of Oct. 15, 1852, under which defendants claim title, was made expressly "subject to prior mortgages thereon," the Yarmouth mortgage being one of such prior mortgages.

Admitting all these, the defendant corporation put their defence upon the ground that they took their title without notice of this liability. They set up the defence of *bona fide* purchase, without notice, and raise no other issue of fact. The real defendants of course cannot avail themselves here of grounds of defence, set up by the nominal defendant, John Patten, who seems to have misapprehended the relation in which he was sued, namely, as surviving trustee under the Yarmouth mortgage. The answer specifically waives all question as to the judgment in the State court, operating as a bar to this claim for 2 per cent under this trust.

Did the P. & K. R. R. Co. take their title with notice?

Whether the trust indorsement on the Yarmouth certificates is sufficient in form to transfer this 2 per cent. to the plaintiffs, is a question of law and not of fact, or of interpretation of the written agreement, and any averment in the answer upon this point is of no account. If it is sufficiently explicit to enable this court to determine what the real intention of the parties was, it will of course be your duty to carry it into effect.

There can be no question but that the terms of the agreement to transfer this 2 per cent. to the plaintiffs, were all arranged and agreed to, prior to and at the time of the passage of the vote, made a part of the trust, passed Oct. 7, 1852, and before the vote of the same corporation, authorizing the defendants' mortgage, the only thing remaining to be done, being the

putting it in form, and having it indorsed on the Yarmouth certificates, and formally signed by the Yarmouth stockholders and the President of the K. & P. R. R. Co., as evidence of their assent to the application.

The fact that the trustees under the defendants' mortgage when they entered into the agreement for possession with the directors, Aug. 18, 1856, stipulated to continue to pay this 2 per cent. to the plaintiffs, or 5 per cent. on the Yarmouth mortgage, shows they then understood that this trust was obligatory on them.

The defendant, John Patten, was trustee under Yarmouth mortgage, as well as under the defendants' mortgage, and was, as appears, a large holder of Yarmouth stock, and of bonds secured by the defendants' mortgage, and was so practically one of the parties creating this trust in behalf of the plaintiffs. At the time this trust was created, this 2 per cent. was an *existing lien on the property*, through the Yarmouth mortgage, which was duly recorded May 2, 1850, and the defendants' mortgage is made expressly *subject to it*. This provision in the mortgage in connection with the fact that they went into possession Sept. 1, 1857, five years afterwards, agreeing to continue this 5 per cent. semi-annually, show that the directors of the K. & P. R. R. Co., as well as the trustees and bondholders under defendants' mortgage, well understood the object and purpose of this trust to be as we now represent them, and completely negative the idea that anybody understood that the purpose was to remit this 2 per cent. to the K. & P. R. R. Co., or release any of the defendants from liability therefor. It is a plain and unmistakable recognition of their liability and that the object was as clearly appears by the indorsement and vote.

This provision for the plaintiffs is made by the Yarmouth stockholders, equitable mortgagees, and adds nothing to the burdens of the defendants, and is a part of the specific sum subject to the payment of which they took their mortgage. In consideration of this transfer, for the benefit of the plaintiffs, the Yarmouth stock, before redeemable at the pleasure of the mortgagors, is made irredeemable till Nov. 1, 1870, *three months only* prior to the bringing of this bill. For these reasons we say

the P. & K. R. R. Co., do not sustain the relation of innocent purchasers.

The facts alleged in the bill, and upon which the plaintiffs rely to charge the P. & K. R. R. Co. with this 2 per cent., are undisputed, viz.:—

p 12-14 1. That the Yarmouth mortgage made to John Patten and others, trustees, and duly recorded May 2, 1850, secured 5 per cent. semi-annually, to the holders of that stock, amounting to $202,400, and that the mortgage was the first lien on that portion of the road.

p 15-16 2. That the mortgage of Oct. 15, 1852, to John Patten and others, trustees, under which the P. & K. R. R. Co. claim title, was made subject to prior mortgages including the Yarmouth mortgage, which secured the Yarmouth stock and 5 per cent. semi-annual dividends to the plaintiffs' assignors.

3 That the vote of Oct. 7, 1852, providing for the trust agreement and transfer to the plaintiffs, was passed by the K. & P. R. R. Co. before the vote authorizing the defendants' mortgage; that the trust agreement was fully carried out as provided by that vote and everything done to entitle the plaintiffs to its full benefit, having surrendered their 5 per cent. certificates and accepted their present 3 per cent. certificates in exchange

p 20 therefor, the directors giving them a lien on the road for their 2 per cent.

4. That John Patten and others, trustees under defendants' mortgage, before going into possession of the road, Sept. 1, 1857, entered into an agreement with the directors of the K. & P. R. R. Co., being fully authorized to do so by the bondholders who are now the stockholders of the P. & K. R. R. Co., where-

p 21-22 by the said trustees took possession of the road, agreeing, as a condition of being so let into possession, to pay not 3 per cent. semi-annually under the Yarmouth mortgage but 5 per cent., 2 per cent. of which belonged to these plaintiffs, as the trustees and bondholders well know.

p 25 5. That the Act of April 15 1857, under and by virtue of which the defendants foreclosed their mortgage and formed their corporation, provides that such foreclosure "shall not impair the right of any party claiming under a prior mortgage" as these plaintiffs confessedly do, and finally the deed of Jany. 1, 1864, from the Trustees to the P. and K. R.R. Co., required by section 5 of this Act, expressly reserves all rights under the Yarmouth mortgage of April 30, 1850, under which plaintiffs claim.

See page 221-2

Propositions of Law.

We claim as matter of law resulting from these undisputed facts:

1. That it was competent for the K. & P. R. R. Co. mortgagors and the Yarmouth stockholders equitable mortgagees to create a valid trust in behalf of the plaintiffs in relation to this antecedent and existing lien of 5 per cent. semi annual dividend, subject to the payment of which defendants took their mortgage. That it is no valid objection thereto, even if this trust was consummated after the defendants took their mortgage, since it imposes no additional burden, it being matter of indifference to them whether they pay 5 per cent. to the Yarmouth stockholders or 3 per cent. to them and 2 per cent. to the plaintiffs.

2. That, having taken their mortgage subject to prior mortgages, this Yarmouth mortgage being one, they are estopped to deny their liability for any sum covered and secured by that mortgage. The K. & P. R. R. Co. had a right to require them to assume and pay all prior liens upon the road, and having voluntarily assumed this liability they cannot now repudiate it. It creates a privity between them and the plaintiffs, and they become directly liable and the plaintiffs may enforce this liability by proceedings in equity for the amount due them. They are estopped, too, upon the ground that the plaintiffs changed their position by giving up their original 5 per cent. certificates, and accepting their three per cent. ones upon the faith of this provision for their benefit. *Ellsworth* v. *Mitchell*; *Newell* v. *Hill*; *Shufelt* v. *Shufelt*.

3. That being let into possession of the road, as they were, under the agreement of Aug. 18, 1856, and their agreeing to continue to pay 5 per cent. under the Yarmouth mortgage as a condition of being so let into possession, is a sufficient consideration for their undertaking to pay it, and in connection with their trust agreement and the fact that their mortgage is made subject to the Yarmouth mortgage conclusively fixes their liability.

4. That the trust agreement under which plaintiffs claim is in writing duly signed by each Yarmouth stockholder and the mortgagors, and it is not competent for the defendants by parol to change it or show that it was made for any other or dif-

ferent purpose than appears by its terms. The statute of frauds requires such trusts to be in writing and when so created they cannot be defeated by parol or be made to operate differently from the expressed intention. Courts of equity are even more careful than courts of law to see that the real intent is carried out as expressed. *Pattison* v. *Hull*; *Hipwell* v. *Knight*.

5. That the assignment of this 2 per cent. by the Yarmouth stockholders with the assent of the corporation, carries with it the mortgage liens for the protection and enforcement of the claim assigned. Story's Eq. Jur., 1044; *Pattison* v. *Hull*.

6. That this trust indorsement on the Yarmouth stock signed by each stockholder and the mortgagors constitutes an executed trust. The fact that the 2 per cent. was to be paid to the plaintiffs till the stock was redeemed does not make the trust executory.

Mr. Perry says, as the result of the authorities,—"A trust created by deed or will so clear and certain in all its terms and limitations that a trustee has nothing to do but carry out all the provisions of the instrument according to its letter, is called an executed trust. * * * They are called executory not because the trust is to be performed in the future, but because the trust instrument itself is to be moulded into form and perfected according to the outlines or instructions made by the settler." Perry on Trusts, § 359.

7. The statute of limitations is not pleaded nor does the evidence show laches. By the terms of the trust the mortgagors and the mortgagees agree to postpone payment till Nov. 1, 1870, just three months before the bill was brought, which fully protects stock and dividends up to that time. By it, too, each Yarmouth stockholder "authorizes and directs the trustees from and after April 1, 1853, *until this stock shall be redeemed*, to pay over to the Treasurer" this 2 per cent. And this stock was not redeemed when this bill was brought and has not been wholly redeemed to this day. By it, too, the Yarmouth portion of the road covered by the mortgage is to remain the property of the Yarmouth stockholders until this stock and dividends are fully paid, thus giving an express lien for them. It would have been premature for the plaintiffs to bring the bill before Nov. 1, 1870,

when the entire mortgage became due. The defendants' title to the property, too, was in dispute until after this bill was brought, and it was doubtful whether they could support it under the foreclosure as it is now conceded they have. Neither mortgage liens or trusts are within the statute. Perry on Trusts, §§ 828, 840, and cases cited. *Dick* v. *Balch*; *Eastman* v. *Foster*.

8. The defence of usury is not invoked in the answer of the real defendants and is not open here.

The 5 per cent. semi-annual dividends was fully authorized by the charter of the corporation and by law. It is not interest but dividends, and the answer admits that the earnings were sufficient to pay them.

The earnings cannot be usury when paid to the stockholders, as these were. It would be absurd to call the earnings usury if enough to pay this dividend and not usury if less than enough. But the defendants took their mortgage subject to the payment of these dividends, and this defence is not open. They could only obtain the right to set up the defence by assignment from the mortgagors. But the right to set it up is not only not assigned but is expressly withheld. The mortgagors and mortgagees united in setting aside this 2 per cent. for the plaintiffs. In consideration of this provision for their benefit the plaintiffs surrendered to the mortgagors their certificates on which 5 per cent. semi-annually was payable, and accepted 3 per cent. certificates, and the mortgagors and their grantees are estopped now to say it is usury, having taken their mortgage subject to the Yarmouth mortgage, since the plaintiffs cannot be restored to their rights.

But if this defence were open here it is in avoidance and the burden is on the defendants. This court held in *Newell* v. *Nixon*, that they would not notice it unless pleaded and proved.

9. All the parties in anyway interested, are made defendants; the P. & K. R. R. Co., who own the road, and the trustees under the Yarmouth mortgage. The trustees never received any of these dividends, but they were always paid by the treasurer to the persons entitled. As this 2 per cent. is ultimately payable to the plaintiffs they may sue directly for it in equity as they have done. *Russell* v. *Clark, Ex'or*,

10. The P. & K. R. R. Co. cannot avail themselves of any points of defence set up by Patten in his answer, not found in theirs. He has apparently mistaken the capacity in which he is sued, and has answered only as trustee under the mortgage of Oct. 15, 1852, instead of the Yarmouth mortgage, which is the matter in controversy here.

If necessary to answer as trustee under the former mortgage, it would seem sufficient if he had pleaded a conveyance to the P. & K R. R Co. by himself and co-trustees, and a discharge from the trust, and disclaimed all interest.

But having answered, it becomes proper for us to say, that in every essential particular wherein his answer differs from that of the P. & K. R. R. Co., it is false.

He states that earnings enough did not come into the hands of himself and co-trustees while in possession of the road under the agreement of Aug. 18, 1856, to pay 5 per cent. semi-annually on the Yarmouth mortgage. The annual report of the trustees and the answer of the real defendants show directly the contrary.

He says that the purpose of this trust in behalf of plaintiffs was to remit and release this 2 per cent. to the mortgagors as usury. The agreement for possession, of Aug. 18, 1856, to which he was a party, stipulating to continue to pay 5 per cent. semi. annually upon the Yarmouth mortgage; the fact that he was a trustee under the Yarmouth mortgage and held Yarmouth stock with this trust indorsed on the certificates, and was a holder of a large amount of preferred stock and received his 2 per cent. thereon under this trust, in addition to the answer of the real defendants, show this averment to be false.

He co-operated with Hagar, Rice & Co., to divert from the K & P. R. R. Co., $110,000 for speculative purposes to make the "Williams purchase," and this while he and his co-trustees were in possession of the road, agreeing to pay this 5 per cent. under the Yarmouth mortgage, and with this amount of abstracted earnings in hand he swears that they were not enough to pay this 5 per cent. The reports of himself and co-trustees and the other answer show the contrary to be the truth.

The sum illegally and fraudulently taken from the old corporation was enough and more than enough to pay the plaintiffs

entire claim, and every dollar of it went into the pockets of the persons composing the P. & K. R. R. Co.

EQUITIES.

All the equities are with the plaintiffs. They gave up their original cirtificate which secured them larger dividends in consideration of this provision for securing them absolutely a portion of their present dividends. This trust imposes upon the defendants nothing that they did not agree to assume when they took their mortgage.

The earnings of the Yarmouth portion of the road were more than enough to pay 5 per cent. semi-annually on that stock.

The evidence shows that the ten persons composing the P. & K. R. R. Co., with the exception of George F. Shepley and John B. Brown, all held offices of trust under the K. & P. R. R. Co., when they acquired title by foreclosure, four being directors, three trustees and one superintendant, they having purchased in the bonds secured by the mortgage of Oct. 15, 1852, at nominal rates while in possession under the agreement of Aug. 18, 1856. They thus acquired the road for about $1,250,000, which the evidence fully shows was worth $2,500,000. In fact, they paid nothing for it except the small amount paid for the bonds purchased, secured by the mortgage of Oct. 15, 1852, all the rest being prior mortgages which have been or are being extinguished by the earnings of the road, by sinking fund established by the K. & P. R. R. Co. The witness, John D. Lang, and others, and the reported earnings show the value and resources of the road.

The evidence shows that while the trustees under defendants' mortgage, were in possession of the road under the agreement of Aug. 18, 1856, stipulating to pay this 2 per cent. to the plaintiffs, they with their associates applied to their own use $110,000 of these earnings to make the "Williams purchase" so-called, a purely private speculation which went to the benefit of the P. & K. R. R. Co., and was of itself enough to pay the plaintiffs' claim.

As to the averments in the answer as to change of location in passing round Portland, they are not responsive to any allegations in the bill, are unsupported by evidence, and the bur-

den is on the defendants. The expense of this change was incurred and mostly paid before the defendants foreclosed their mortgage, and after this trust was created for the plaintiffs, by the earnings of the K. & P. R. R. Co.

We hold, then, that the plaintiffs are entitled to the relief prayed and to a decree that the P. & K. R. R. Co., and John Patten, sole surviving trustee under the Yarmouth mortgage, account for 2. per cent. semi-annually on the sum of $202,400 for such years since April 1, 1853, as the same has not been paid with semi-annual rests for interest. *Walden* v. *Bodley*, 14 Pet., 164; *Barney* v. *Saunders*, 16 How., 543; *Raphael* v. *Roehm*, 11 Ves., 92.

A. J. Shuckford
Solicitor

No 154 { Bowen vs Chase et al } Page 98½

River

No 15 Containing 6 A. 2 R.

No 14 Cont. 6 A. 2 R. 20 P.

No 13 Cont. 5 A. 2 R.

No 12 Cont. 6 Acres 0. 0.

No 11 Cont. 6 A. 2 R.

No 10 Cont. 6 A. 3 R.

No 9 Cont. 7 Acres - 0.

No 7

Lot No 6

29 Acres 2 Roods

2 Roods

Land of George

of Mrs Bauer

South 18 East 950 feet

East 950 feet

51 East 1520 feet

1000

875

800

930

1030

985

940 feet

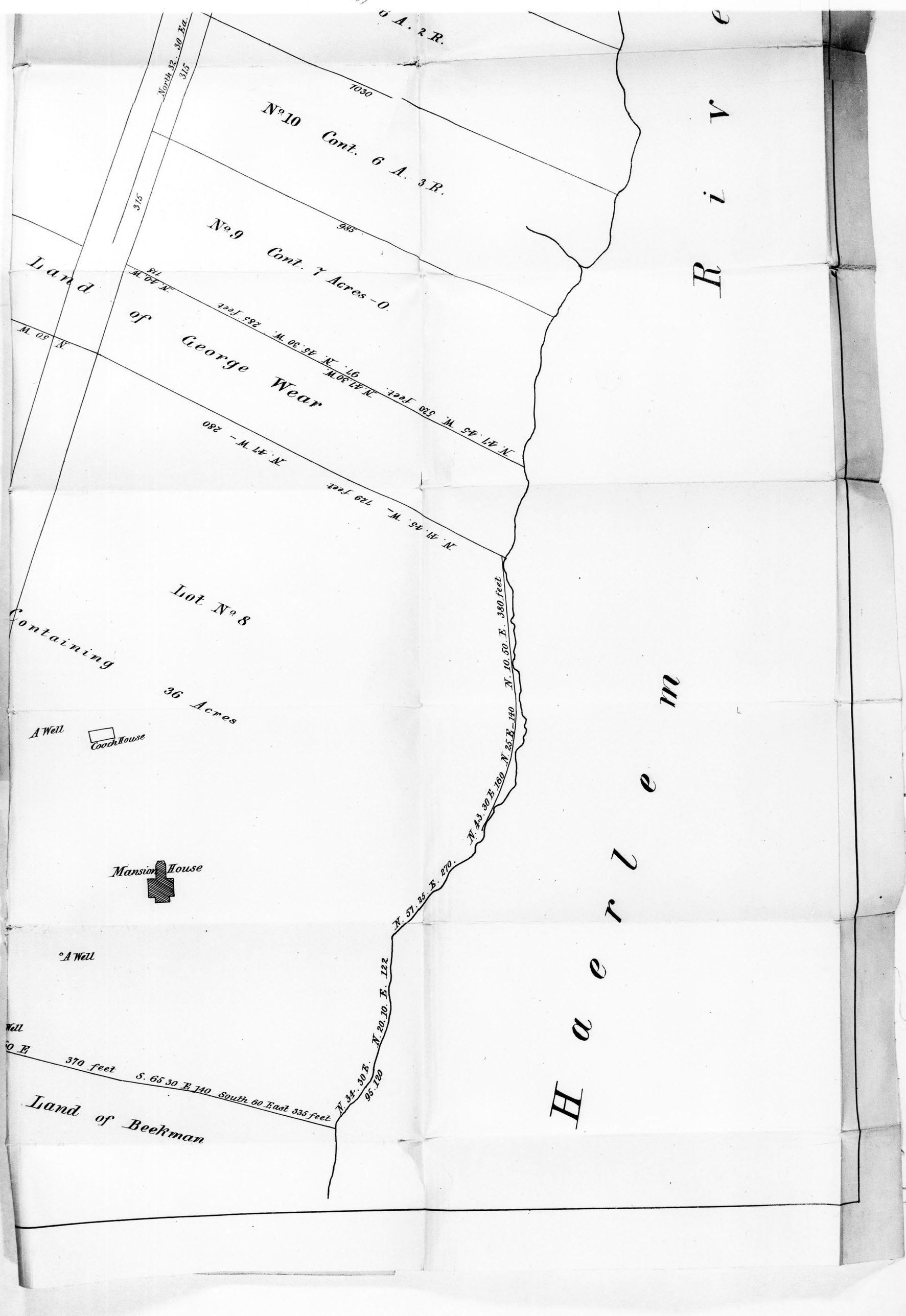
315

N. 30. 32 E.

North 32. 30 Ea.

N. 45. 30 W. 285 Feet

N. 30 W.


6 A. 2 R.
North 32. 30 Et.
315
1030
No 10 Cont. 6 A. 3 R.
315
935
No 9 Cont. 7 Acres - 0.
Land of George Wear
N. 40 W. 118
N. 41 30 W. 285 Feet
N. 45. 30 W. 97
N. 41. 45 W. 520 feet
N. 47 W. 280
N. 41. 45. W. 729 feet
N. 10. 30 E. 380 feet
N. 25 E. 190
N. 43. 30 E. 160
N. 57. 25 E. 270.
N. 20. 30 E. 122
N. 34. 30 E. 95. 120
Lot No 8
Containing
36 Acres
A Well
Coach House
Mansion House
A Well
370 feet
S. 65. 30 E. 140
South 60 East 335 feet
Land of Beekman
Haerlem
River

No 14

No 15 Cont.

No 12 Cont. 6 Acres

No 11 Cont. 6 A. 2 R.

No 10 Cont. 6 A. 3 R.

No 9 Cont. 7 Acres - 0.

315

980 feet

N. 30. 32 E.

315

315

North 32. 30 E.

315

930

800

1030

985

N. 30 W. 285 feet

N. 65 E. 980 feet

Land of Mrs Bauer

East 1520 feet

Lot No 6

Containing 29 Acres 2 Roods

South 56. 0 East 950 feet

Lot No 7

Containing 20 Acres 2 Roods

Land of Geo

North 51

Farm House

Barn

S. 65 W. 101 . S 8 30 266 10 15 W. 270. South 5 West 500 feet

Post Road to Albany

South 15 West 467 feet S. 9 W. 281 S. 12 W. 258 S. 9 10 W. 115 ° S. 13 30 W. 272 feet S. 5. 30 W. 89

S. 12. 43 W. 204. South 10 West 332 feet S. 23. 15 W. 300 feet. S. 10 W 141 S. 5. 3. W. 180

South 13 30 West 420 feet S. 22 W 150

S 22 W. 140 S. 16. W. 120 S. 10. 30 W. 230

South 3. 30. West 460 feet

S. 49 E. 565 feet

S. 14. 15 W. 3

S. 14. 15 W. 35

34 Acres 15 Perches

Barn

Farm House

33 Acres 1 R. 25 Perches

No. 11 Cont. 6 A. 2 R.

No. 10 Cont. 6 A. 3 R.

No. 9 Cont. 7 Acres - 0

930

1030

985

315

315

North 32. 30 Ea.

N. 40. W. 78

N. 41 W - 280

N. 41. 45. W - 729 Feet

N. 41. 30 W. 520 Feet.

N. 41. 30 W. 285 Feet.

of George Wear

Lot No. 8

36 Acres

Containing

20 Acres 2 Roods

Land of

S. 49 E. 565 feet.

N. 41. 30 W. 990 feet

A Well

Coach House

Mansion House

A Well

A Well

S 60 E

370 feet

S. 65 30 E 140 South 60 East 335 feet

N. 34. 30 E. 95. 120

N. 20. 30 E. 122

N. 57. 25. E. 210

Land of Beekman

S. 20. 30. 303

South 430 W. 115. South 12 30 W. 188. S. 22. 30 W. 170

Post Road to Albany

S. 12. 30. 45. S. 22. 30 W. 169 S. 21. 20 W. 298 South 20. 30 West

S. 7. 15 W. 179 feet

S. 7. 15 West 179

S. 12 10 W. 115 S. 22. 30 W. 169. S. 21. 20 W. 298 South 20. 30 West

Fifth Avenue

Barn

a stone wall

S. 14. 75 W. 340 feet S. 7 W. 260 South 140 S. 1-30 W. 227 S. 4-30 W. 247

S. 14. 15 W. 350 S. 5. 5 W. 262 S. 1. 20 W. 140 feet S. 229

S. 23. 15 W. 300 feet. S. 10 W 141 S. 5. 3. W. 180

S. 6 W. 76

South 3. 30. West 460 feet

22 W. 140 S. 16. W. 120 S. 10. 30 W. 230

Containing

20 Acres 2 Roods

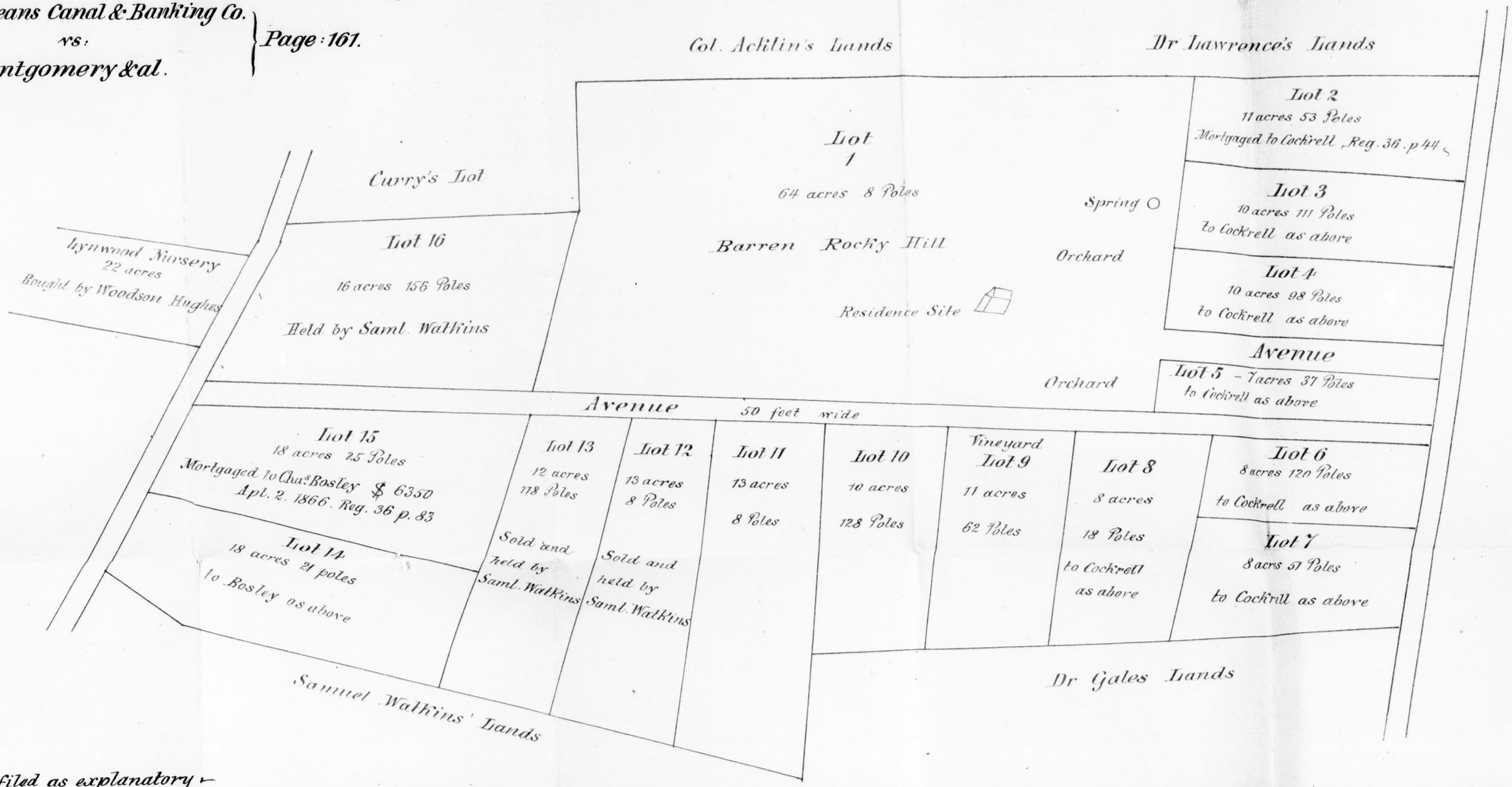
33 Acres

1 R. 35 Perches

Exhibit Nº3 to Answer of Victor Montgomery et al.

Plat of Tennessee property, taken from Map filed with Masters Report-

Nº 327 | New Orleans Canal & Banking Co. vs: Montgomery & al. | Page: 161.



Lots	Acres
1	64.8 poles
2	11,53 "
3	10,111 "
4	10,98 "
5	7,37 "
6	8,120 "
7	8,57 "
8	8,18 "
9	11,62 "
10	10,128 "
11	13,8 "
13	12,18 "
14	18,21 "
15	18,25 "
16	16,156 "
	243,62
Nursery	22
	265,62

To be filed as explanatory -

Attachment out of Chy. at Nashville favor J. W. Hughes for some 18,000 $ levied on all this land 15th April 1867 11.25 A.M. — Attachment on same favor Chs Bosley for debt secured by lien on Mississippi lands and Tennessee lands levied on all this land 24 April 1867 2 P.M. — Lots 14 and 15 Mortgaged April 2. 1866 to Bosley for $ 6350.00 — Lots 2, 3, 4, 5, 6, 7, 8. Mortgaged to Cockrell Mch. 22, 1866 for $ 7458.20/100 — Lots 16, 12 and 13, held by Saml. Watkins under vendor's lien for $ 4150, and bot by him: — All sold Septr. 1868 by Master & proceeds applied as per his Report -

This land was thought to be worth on an average some $ 300 per acre but only sold for 80 and 100 $ average owing to the depressed condition of real estate in Tennessee at the time of sale — A few acres not here described but they are attached and ordered or will be ordered to be sold — There are sundry other attachments levied on all said lands but the same are still pending and undetermined — All above lands conveyed by A. B. Montgomery to J. M. Montgomery by deed dated 1. Feby 1867 - ack. April 1867. Reg. May 11. 1867. Reg. 38 p 5 —

Filed & entd Aug. 14th 1869-

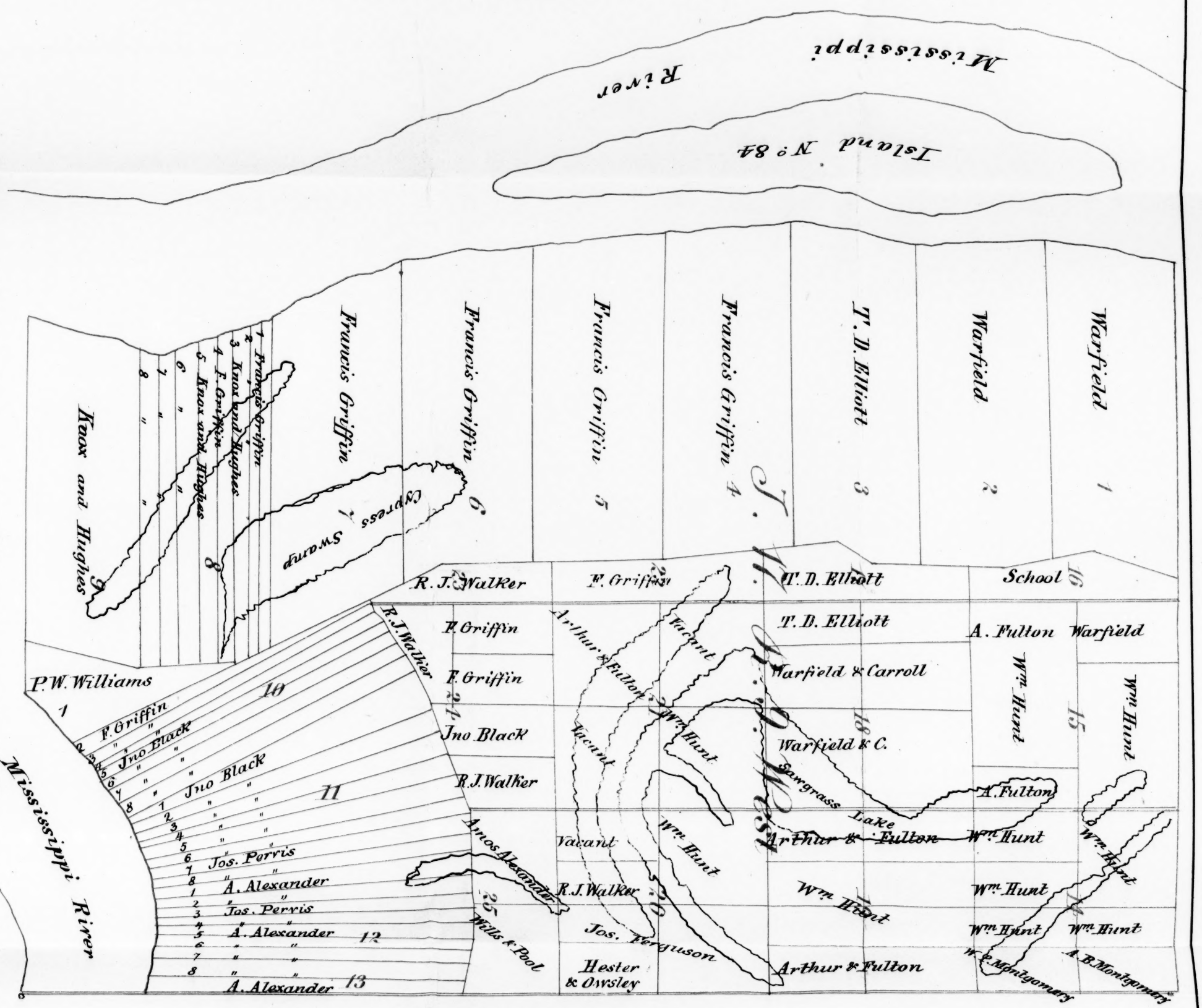
G. J. Sureau Clerk

No 327 | The New Orleans Canal & Banking Co. vs: Montgomery | Page 162.

Exhibit No 4 to Answer of Victor Montgomery et all.

Contents

Sec.	Acres	hths
1	639	93
2	646	48
3	641	53
4	637	86
5	647	54
6	644	16
7	643	37
8	643	54
9	655	99
10	620	69
11	633	93
12	641	24
13	604	10
14	637	68
15	639	75
16	108	77
17	146	17
18	649	15
19	643	60
20	642	–
21	643	76
22	138	28
23	80	08
24	396	47
25	276	63



State of Mississippi
Washington County } I, John Fawn, Clerk of the Probate Court in and for said county do hereby certify, that the forgoing and annexed map of Township Seventeen Range Nine West is a full true and correct copy of the original as the same remains on file in my office, and that the names of owners placed thereon are true and correct as taken from the land assessment roll of said county for the year 1846.

L.S.

Given under my hand and official Seal this 6th day of August 1869.

John Fawn Clerk
By E. J. Comstock D. C.

Filed & entd Aug. 14th. 1869.
G. T. Swann Clk.

Exhibit N°5 to Answer of Victor Montgomery et al.

Sec.	Contents Acres	Hdths
1	662	96
2	637	60
3	642	80
4	674	93
5	255	24
6	338	72
7	642	96
8	642	55
9	645	11
10	448	72
11	672	21
12	646	91
13	640	00
14	648	88
15	637	58
16	647	20
17	636	96
18	636	32
19	641	92
20	637	28
21	641	68
22	640	64
23	642	89
24	380	70
25	613	38
26	640	00
27	639	68
28	639	76
29	638	80
30	640	08
31	639	60
32	642	84
33	611	90
34	96	26
35	203	47
36	638	38
37	647	12
38	638	72



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Filed & entd Aug. 14th 1869.

G. L. Swann Clerk

Exhibit A. to Deposition of W.A. Haycraft –

T. 17 – R. 9. W.

T. 17. – R. 8. W.

Contents		
Sec.	Acres	tenths
1	639	93
2	646	48
3	641	55
4	631	86
5	647	54
6	644	16
7	643	37
8	643	54
9	555	99
10	620	69
11	633	93
12	641	24
13	604	10
14	637	68
15	639	76
16	118	77
17	146	17
18	649	15
19	643	60
20	642	–
21	643	76
22	138	38
23	80	08
24	395	47
25	275	63

Contents		
Sec.	Acres	tenths
1	662	96
2	637	60
3	642	80
4	674	93
5	255	24
6	338	72
7	642	55
8	642	96
9	645	11
10	648	72
11	672	21
12	646	91
13	640	00
14	640	88
15	637	68
16	641	20
17	636	96
18	636	32
19	641	92
20	637	28
21	641	68
22	640	64
23	642	89
24	380	70
25	613	38
26	640	–
27	639	68
28	639	76
29	639	80
30	640	08
31	639	60
32	642	84
33	611	90
34	96	26
35	203	41
36	638	38
37	641	12
38	638	72

Island 84

Miss River

Saw Grass Lake

Cypress Slough

Cypress Swamp

Miss River
(Now Lake Lee)

I certify this to be an authentic copy of the above Townships on record 24th June 1871 – R. A. O'Hea County Engr –

R. A. O'Hea C. E.

No 327 — The New Orleans Canal & Banking Co. vs: Montgomery & al — Page 281.